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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/120,105 09/10/93 WINTER

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EXAMINER

CONNOLLY AND HUTZ
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P.O. BOX 2207
WILMINGTON DE 19899

WILSON, D.	
ART UNIT	PAPER NUMBER

1713
DATE MAILED:

06/26/01

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

08/120,105

Examiner

D. R. Wilson

Applicant(s)

WINTER ET AL.

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 June 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (see NOTE below);
- (b) ☐ they raise the issue of new matter. (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment.

4. ☒ Applicant's reply has overcome the following rejection(s): See attachment.
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 15, 17-19, 21-25 and 27-31.
- Claim(s) withdrawn from consideration: _____.
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
11. ☐ Other: _____.

D. R. Wilson
Primary Examiner
Art Unit: 1713

ADDITIONAL COMMENTS

Response to Proposed Amendment After Final

1. Applicant's proposed amendment filed 6/11/01, after final rejection, has been fully considered with the following results.
2. The proposed amendment will not be entered because it changes the scope of what is being claimed in that it appears to attempt to limit that being claimed to those with a single melting peak by DSC measurement. This raises an issue of basis and clarity under 35 U.S.C. § 112, which needs to be considered.
3. The objection under 35 U.S.C. 132 to new matter and the corresponding rejection of Claim 30 under 35 U.S.C. § 112, first paragraph, is not overcome by applicant's argument and the rejection is maintained for reasons of record. It remains that the support by Examples 1 and 23 only concern polypropylene and a propylene/ethylene copolymer, whereas the claim includes other copolymers with propylene.
4. The proposed amendment if entered would not overcome the rejection of Claims 15, 17-19, 21-25 and 27-31 under 35 U.S.C. 112, first paragraph, concerning the DSC characterization of the melting behavior of components of the blend, as well as that of the blend itself. Applicant's argument has been considered and is not deemed to be persuasive for reasons of record.
5. The proposed amendment if entered would have overcome the rejection under 35 U.S.C. § 112, second paragraph, concerning, (i) the polymerized ethylene content (paragraph 15(c)¹), and (ii) the optionally substituted fluorenyl group (paragraph 12 (e)), and in this regard the rejection would have been overcome. However, the rejection on the other bases would be maintained. In regards to paragraph 15 (a), applicant's opinion that the Examiner is misreading Claim 17 is interesting but is not deemed to be persuasive. The claim is to a composition made in the presence of two catalysts and applicant argues that somehow one is supposed to know that the melting points referred to are those obtained when the catalysts are used separately. This is not the language of the claims and a clear basis for this does not appear to exist in the specification. In regards to paragraph 15 (b), the description pointed to by applicant

at page 12, lines 18-30, appears to supply no more information than in the claim, and the argument is therefore not deemed to be persuasive. In regards to paragraphs 15(d) and 17, the arguments are not deemed to be persuasive because they merely state conclusions, and do not address the merits of the rejection.

6. The argument traversing the rejection of Claims 15, 17-19, 21-25 and 27-31 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,700,886 (Winter'886), is not deemed to be persuasive because the merits of the stated rejection have not been addressed.

7. The proposed amendment would have overcome the objection to the title and abstract if entered. It is to be noted that no one could determine that the temperatures on page 13, lines 31-32 are a polymerization temperature range as opposed to a melting range, as has been explained by applicant. The Examiner accepts that Comparative Example 2 provides data for the blend. However, it remains that Comparison Example 1 has little meaning as no data is presented for the resulting blend.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. R Wilson whose telephone number is 703-308-2398.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 703-308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications. The unofficial direct fax phone number to the Examiner's desk is 703-872-9029.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-2351.



D. R. Wilson
Primary Examiner
Art Unit 1713

¹ The referenced paragraphs in this section are to the previous Office Action.